

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)
BENEFITS FUND, PIRELLI ARMSTRONG)
RETIREE MEDICAL BENEFITS TRUST;)
TEAMSTERS HEALTH & WELFARE FUND)
OF PHILADELPHIA AND VICINITY;)
PHILADELPHIA FEDERATION OF)
TEACHERS HEALTH AND WELFARE)
FUND; DISTRICT COUNCIL 37, AFSCME -)
HEALTH & SECURITY PLAN; JUNE)
SWAN; BERNARD GORTER, SHELLY)
CAMPBELL and CONSTANCE JORDAN,)

Plaintiffs,)

v.)

FIRST DATABANK, INC., a Missouri)
corporation; and McKESSON)
CORPORATION, a Delaware corporation,)

Defendants.)

C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' MOTION TO STRIKE MCKESSON'S RESPONSE TO
PLAINTIFFS' MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT
OF THEIR MOTION TO MODIFY THE U&C SCHEDULE**

Plaintiffs move to strike as impertinent McKesson's response to Plaintiffs' motion for leave to file a reply brief in support of their motion to modify the U&C schedule. Fed. R. Civ. P. 12(f); *Baldi v. Brown*, 2007 U.S. Dist. LEXIS 31337, at *2 (D.N.H. April 27, 2007).

Plaintiffs' motion to file a reply brief is not a "cat fight." In most jurisdictions, the moving party is authorized to file a reply brief as a matter of right. This Court routinely authorizes reply briefs to address new issues or correct misconceptions raised by the opposition brief. McKesson's opposition to Plaintiffs' underlying motion raises precisely those concerns,

and a reply brief is therefore warranted under the circumstances. The only unseemly aspect of this motion is McKesson's response and its dogged insistence on having the last word.

McKesson's irreverent response is neither helpful nor on point. It trivializes the underlying issue, *i.e.* whether Plaintiffs should be allowed sufficient time to overcome McKesson's attempts to block Plaintiffs from obtaining highly relevant data that affect the claims of millions of cash consumers, whose only vehicle of recovery is a class action. Further, it transmutes a substantive dispute into a personal squabble. Plaintiffs' counsel are also counsel in the AWP litigation, which involved dozens of defendants and scores of attorneys, litigating highly contested facts, and yet quarrels in that case were minimal and never of this character.

DATED: June 4, 2008

By /s/ Steve W. Berman

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on June 4, 2008.

/s/ Steve W. Berman
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